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EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राधिकार से प्रकाशित

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No. 37] NEW DELHI, MONDAY, AUGUST 8, 1966/SRAVANA 17, 1888

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on the 8th August, 1966:—

BILL No. 51 OF 1966

A bill further to amend the Criminal Law Amendment Act, 1952.

BE it enacted by Parliament in the Seventeenth Year of the Republic of India as follows:—

1. This Act may be called the Criminal Law Amendment (Amending) Act, 1966. Short title.

2. In sub-section (3A) of section 8 of the Criminal Law Amendment Act, 1952 (hereinafter referred to as the principal Act), for the word and figures "section 350", the words and figures "sections 350 and 549" shall be substituted. Amendment of section 8.

46 of 1952.

Insertion of new section 11.

3. After section 10 of the principal Act, the following section shall be inserted, and shall be deemed always to have been inserted, namely:—

Military, naval and air force laws not to be affected.

"11. (*1*) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any military, naval or air force law.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (*1*), the court of the special Judge shall be deemed to be a court of ordinary criminal justice.".

Validation and indemnity.

4. No trial or other proceeding held or taken before, and no sentence passed by a court-martial or any other authority under any military, naval or air force law before the 30th day of June, 1966, shall be called in question in any court merely on the ground that the court-martial or other authority had no jurisdiction by virtue of the provisions of the principal Act, and all such trials, proceedings and sentences shall, notwithstanding any judgment or order of any court, be as valid and operative as if they had been held, taken or passed in accordance with law; and accordingly no suit or other legal proceeding shall be maintained or continued against any person whatever on the ground that any such trial, proceeding or sentence was not held, taken or passed in accordance with law.

Pending cases.

5. (*1*) Notwithstanding anything contained in this Act or in the principal Act as amended by this Act,—

(*a*) cases pending immediately before the 30th day of June, 1966, before a special Judge in which one or more persons subject to military, naval or air force law is or are charged with and tried for an offence under the principal Act together with any other person or persons not so subject, and

(*b*) cases pending immediately before the said date before a special Judge in which one or more persons subject to military, naval or air force law is or are alone charged with and tried for an offence under the principal Act and charges have already been framed against such person or persons,

shall be tried and disposed of by the special Judge.

(*2*) Where in any case pending immediately before the 30th day of June, 1966, before a special Judge, one or more persons subject to military, naval or air force law is or are alone charged with and tried for an offence under the principal Act and charges have not been framed against such person or persons before the said date, or

where, on appeal or on revision against any sentence passed by a special Judge in any case in which one or more persons so subject was or were alone tried, the appellate court has directed that such person or persons be retried and on such retrial charges have not been framed against such person or persons before the said date, then, in either case, the special Judge shall follow the procedure laid down in section 549 of the Code of Criminal Procedure, 1898, as if the special Judge were a Magistrate.

5 of 1898.

Repeal and saving.

6. (*1*) The Criminal Law Amendment (Amendment) Ordinance, 1966, is hereby repealed.

7 of 1966.

(*2*) Notwithstanding such repeal, anything done or any action taken under the said Ordinance or under the principal Act as amended by the said Ordinance shall be deemed to have been done or taken under this Act or under the principal Act as amended by this Act as if this Act had commenced on the 30th day of June, 1966.

STATEMENT OF OBJECTS AND REASONS

Under sub-section (*1*) of section 7 of the Criminal Law Amendment Act, 1952, the offences specified in sub-section (*1*) of section 6 of that Act are triable by special Judges only. In Major E. G. Barsay *v.* State of Bombay (AIR 1961 S. C. 1762), it has been held by the Supreme Court that in view of the language of section 7 of the Criminal Law Amendment Act, 1952, the special Judge has exclusive jurisdiction to try any such offence and the mere fact that any such offence might also be an offence under the Army Act would not be of any relevance.

2. The military authorities have been, however, proceeding on the assumption that the jurisdiction in respect of these offences committed by military personnel is concurrently exercisable by the special Judge and courts-martial and accordingly a number of cases have been tried by courts-martial and other military authorities and quite a good number is pending before them.

3. It was therefore considered necessary and expedient to amend the Criminal Law Amendment Act, 1952, so as to insert a new section therein (with retrospective effect from the commencement of the Act) to save the jurisdiction exercisable by a court-martial or other authority under the military, naval or air force laws and to validate the trials held, proceedings taken and sentences passed by courts-martial and other competent authorities under these laws and for this purpose, the Criminal Law Amendment (Amendment) Bill, 1965, was introduced in the Lok Sabha on the 3rd December, 1965. As the Bill could not be passed during the Budget Session of Parliament, it was considered that the trials pending before courts-martial and other competent military authorities should be allowed to proceed without any further delay in fairness to the affected service personnel, and it accordingly became necessary to have the provisions proposed in the Bill promulgated in the form of an Ordinance, namely, the Criminal Law Amendment (Amendment) Ordinance, 1966 (7 of 1966), promulgated by the President on the 30th June, 1966. While promulgating the Ordinance, opportunity was taken to incorporate therein a suitable saving provision with respect to certain cases pending, immediately before the commencement of the Ordinance, before the special Judges.

4. The Present Bill seeks to replace the said Ordinance.

NEW DELHI; JAISUKHLAL HATHI.

The 22nd July, 1966.

BILL NO. 50 OF 1966

A bill to provide for the taking over of the management of the undertaking of the Jayanti Shipping Company Limited for a limited period in order to secure the proper management of the same.

BE it enacted by Parliament in the Seventeenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. This Act may be called the Jayanti Shipping Company (Taking over of Management) Act, 1966. Short title.

2. In this Act, unless the context otherwise requires,— Definitions.

(a) "company" means the Jayanti Shipping Company Limited, being a company as defined in the Companies Act, 1956, having its registered office in the Union territory of Delhi; 1 of 1956.

(*b*) "notified order" means an order notified in the Official Gazette;

(*c*) "prescribed" means prescribed by rules made under this Act;

(*d*) "undertaking" means the property and assets of the company;

(*e*) words and expressions used but not defined in this Act and defined in the Companies Act, 1956, shall have the meanings respectively assigned to them in that Act. 1 of 1956.

CHAPTER II

THE TAKING OVER OF THE MANAGEMENT OF THE UNDERTAKING OF THE JAYANTI SHIPPING COMPANY

Board of Control to take over the management of the undertaking of the company.

3. (*1*) The Central Government may, by notified order, appoint a body of persons (hereinafter referred to as the "Board of Control") to take over the management of the whole or any part of the undertaking of the company or to exercise in respect of the whole or any part thereof such functions of management as may be specified in the notified order.

(*2*) The Board of Control shall consist of a Chairman and such number of other members not exceeding ten as the Central Government may think fit, to be appointed by that Government.

(*3*) The Central Government may either in the notified order issued under sub-section (*1*) or in a subsequent order specify that one or more members of the Board of Control shall be a full-time member or full-time members thereof.

(*4*) The term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Board of Control shall be such as may be prescribed.

(*5*) The salaries, allowances and other remuneration and the conditions of service of the members of the Board of Control shall be such as may be determined by the Central Government.

(*6*) Any notified order issued under sub-section (*1*) shall remain in force for such period not exceeding five years as may be specified in the order:

Provided that if the Central Government is of opinion that in order to secure the proper management of the undertaking of the company it is expedient that any such notified order should continue in force

after the expiry of the period of five years as aforesaid, it may, from time to time, issue directions for such continuance for such period, not exceeding two years at a time, as may be specified in the directions, but no such notified order shall in any case remain in force for more than a total period of ten years; and where any such direction is issued, a copy thereof shall be laid, as soon as may be, before each House of Parliament.

Effect of notified order issued under section 3.

4. (*1*) On the issue of a notified order under section 3 appointing a Board of Control to take over the management of the undertaking of the company,—

(*a*) all persons in charge of the management, including persons holding offices as directors or managers or any other managerial personnel of the company immediately before the issue of the notified order, shall be deemed to have vacated their offices as such;

(*b*) any contract of management between the company and any managing agent or any director or any other managerial personnel thereof holding office as such immediately before the issue of the notified order shall be deemed to have terminated;

(*c*) the Board of Control shall alone be entitled notwithstanding anything contained in the Companies Act, 1956, to exercise all the powers of the Board of directors of the company (including the powers to sell or otherwise dispose of any ships or other properties or assets of the company) whether such powers are derived from the said Act or from the memorandum or articles of association of the company or from any other source;

1 of 1956.

(*d*) as from the date of the notified order, all the properties, assets and effects of the company shall be deemed to be in the custody of the Board of Control who shall, as soon as may be after such date, take all such steps as may be necessary to take into its possession or control all such properties, assets and effects and all actionable claims to which the company is or appears to be entitled.

(*2*) Subject to the other provisions contained in this Act and to the control of the Central Government, the Board of Control shall take such steps as may be necessary for the purpose of efficiently managing the business of the company and shall exercise such other powers and have such other duties as may be prescribed.

Power of Board of Control to appoint managing agent.

5. (*1*) Notwithstanding anything contained in the Companies Act, 1956, or in any other law for the time being in force, or in the memorandum or articles of association of the company, the Board of Control may, with a view to securing the proper management of the undertaking of the company, appoint with the previous approval of the Central Government any individual, firm or body corporate as the managing agent of the company. 1 of 1956.

(*2*) The managing agent shall receive such remuneration as may be determined by the Board of Control with the previous approval of the Central Government.

(*3*) The managing agent shall exercise in respect of the whole or any part of the undertaking of the company such functions of management as may be specified in the order of appointment and as may from time to time be entrusted to it by the Board of Control.

(*4*) The managing agent shall not be removed from office except with the previous permission of the Central Government.

(*5*) In the discharge of his functions the managing agent shall be under the general superintendence and control of the Board of Control.

(*6*) The management of the undertaking of the company shall be carried on pursuant to any directions given by the Board of Control in accordance with the provisions of the notified order issued under sub-section (*1*) of section 3 and the managing agent or any other person having any functions of management in relation to the undertaking of the company or any part thereof shall comply with such directions.

Contracts in bad faith, etc., may be cancelled or varied.

6. Without prejudice to the provisions contained in section 4, the Board of Control may, with the previous approval of the Central Government, make an application to any court having jurisdiction in this behalf for the purpose of cancelling or varying any contract or agreement entered into, at any time before the issue of the notified order under sub-section *(*1*) of section 3, between the company and any other person and the court may, if satisfied after due inquiry that such contract or agreement had been entered into in bad faith and is detrimental to the interests of the company, make an order cancelling or varying (either unconditionally or subject to such conditions as it may think fit to impose) that contract or agreement, and the contract or agreement shall have effect accordingly.

No right to compensation for termination of office or contract.

7. Notwithstanding anything contained in any law for the time being in force, no person who ceases to hold any office by reason of the provisions contained in clause (*a*) of sub-section (*1*) of section 4, or whose contract of management is terminated by reason of the provisions contained in clause (*b*) of that sub-section, shall be entitled to any compensation for the loss of office or for the premature termination of his contract of management:

Provided that nothing contained in this section shall affect the right of any such person to recover from the company moneys recoverable otherwise than by way of such compensation.

Application of Act 1 of 1956.

8. (*1*) Notwithstanding anything contained in the Companies Act, 1956, or in the memorandum or articles of association of the company,—

(*a*) it shall not be lawful for the shareholders of the company or any other person to nominate or appoint any person to be a director of the company;

(*b*) no resolution passed at any meeting of the shareholders of the company shall be given effect to unless approved by the Central Government;

(*c*) no proceeding for the winding up of the company or for the appointment of a liquidator or receiver in respect thereof shall lie in any court except with the consent of the Central Government.

(*2*) Subject to the provisions contained in sub-section (*1*), and to the other provisions contained in this Act and subject to such other exceptions, restrictions and limitations, if any, as the Central Government may, by notification in the Official Gazette, specify in this behalf, the Companies Act, 1956, shall continue to apply to the company in the same manner as it applied thereto before the issue of the notified order under sub-section (*1*) of section 3.

1 of 1956.

Power of Central Government to cancel order notified under section 3.

9. If at any time it appears to the Central Government on the application of any shareholder of the company or otherwise that the purpose of the notified order made under sub-section (*1*) of section 3 has been fulfilled or that for any other reason it is not necessary that the order should remain in force, the Central Government may, by notified order, cancel such order and on the cancellation of any such order the management of the undertaking of the company shall revert to the shareholders of the company.

CHAPTER III

MISCELLANEOUS

Duty to deliver possession of property and documents relating thereto.

10. (*1*) Where a notified order has been made under sub-section (*1*) of section 3 in relation to the undertaking of the company, every person having possession, custody or control of any property shall deliver the property to the Board of Control or to any such person (including the managing agent) as may be authorised by the Board in this behalf.

(*2*) Any person who, on the commencement of this Act, has in his possession or under his control any books, documents or other papers relating to the undertaking of the company shall be liable to account for the said books, documents and papers to the Board of Control and shall deliver them up to the Board or to any such person (including the managing agent) as may be authorised by the Board in this behalf.

(*3*) The Central Government may take all necessary steps for securing possession of all properties of the company.

Duty to furnish particulars.

11. The company shall, within ten days from the commencement of this Act or within such further period as the Central Government may allow in this behalf, furnish to the Board of Control a complete inventory of all the properties and assets (including particulars of book debts and investments and belongings) of the company at the commencement of this Act, and of all liabilities and obligations of the company subsisting at such commencement and also of all agreements entered into by the company and in force from such commencement.

Powers of inspection.

12. (*1*) For the purpose of ascertaining whether any property is the property of the company or for any other purpose mentioned in this Act or the rules made thereunder, any person authorised by the Central Government in this behalf shall have the right to—

(*a*) enter and inspect any premises;

(*b*) require any person having the possession, custody or control of any register or record of the company to produce such register or record;

(*c*) require the occupier of any property belonging to, or claimed to be the property of, the company, to submit to the person so authorised such accounts, books or other documents or to furnish to him such information as he may reasonably think necessary; and

(*d*) examine any person having the control of, or employed in connection with, the company and require him to make any statement touching the affairs of the company.

(2) Any person authorised by the Central Government under sub-section (*1*) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Penalty for false statements.

13. (*1*) If any person,—

(*a*) when required by this Act or by any order made under this Act to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or believes to be false or does not believe to be true; or

(*b*) makes any such statement as aforesaid in any book, account, record, return or other document which he is required by any order made under this Act to submit,

he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

(2) Any person, who—

(*a*) having in his possession, custody or control any property forming part of the assets of the company, wrongfully withholds such property from the Board of Control, or

(*b*) wrongfully obtains possession of any property forming part of the assets of the company, or

(*c*) wilfully withholds or fails to produce to any person authorised under this Act, any register, record or other document which may be in his possession, custody or control, or

(*d*) fails, without any reasonable cause, to submit any accounts, books or other documents, when required to do so,

shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

Limitation on prosecution.

14. No court shall take cognizance of an offence punishable under this Act except with the previous sanction of the Central Government or of an officer authorised by that Government in this behalf.

Protection of action taken under the Act.

15. No suit, prosecution or other legal proceedings shall lie against the Central Government or the Board of Control or any member thereof or any other person (including the managing agent) for anything which is in good faith done or intended to be done under this Act.

Overriding effect of Act.

16. The provisions of this Act or any order or rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any law other than this Act or any instrument having effect by virtue of any law other than this Act.

Payment of remuneration and expenses out of the funds of company.

17. All salaries, allowances and other remuneration paid to the Chairman and other members of the Board of Control, the managing agent or any other person who may be appointed or employed in connection with the affairs of the management of the company and all other expenses duly incurred in connection with such management shall be paid out of the funds of the company.

Power of Central Government to give directions.

18. Notwithstanding anything contained in the foregoing provisions of this Act the Central Government may give such directions to the Board of Control as that Government may deem fit for the proper management of the undertaking of the company and the Board of Control shall comply with such directions.

Power to make rules.

19. (*1*) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act, and such rules may provide that they shall take effect either prospectively or retrospectively on such date, not earlier than the 10th day of June, 1966, as may be specified therein.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to remove difficulties.

20. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order as occasion requires, do anything (not inconsistent with the provisions of this Act) which appears to it to be necessary for the purpose of removing the difficulty.

21. (*1*) The Jayanti Shipping Company (Taking Over of Management) Ordinance, 1966, is hereby repealed. Repeal and savings.

4 of 1966.

(2) Notwithstanding such repeal, anything done or any action taken, including any notified order issued, appointment made or direction given under the said Ordinance, shall be deemed to have been done or taken under the corresponding provision of this Act, as if this Act had commenced on the 10th day of June, 1966.

STATEMENT OF OBJECTS AND REASONS

Jayanti Shipping Company, Ltd., was a new venture started in 1961. The Shipping Development Fund Committee, a statutory body, had committed itself to advance a loan of up to Rs. 20·25 crores over a period of years and out of this about Rs. 6·60 crores were already advanced by 7th June, 1966.

For some time past complaints had been made, both in the Parliament and outside, against the management of this company alleging mismanagement, misuse of company's funds, leakage of foreign exchange, non-deposit of Provident Fund and income-tax deductions, non-payment of bills for supplies and services, non-payment of salaries and family allotments, non-payment of premia for insurance of ships and so on. An Enquiry Committee was appointed to go into these complaints but they could not make much headway due to the non-cooperation of the company.

Meanwhile, the pressure of the creditors on the company became so great that it was on the verge of being dragged to insolvency proceedings. Accordingly, to pay off its creditors the company applied to Government for permission to sell four of its ships—two to three abroad and one or two in India. Government could not, however, agree to this because firstly this would result in depletion of the Indian fleet and secondly even after the sale of these 4 ships the company would still be short by about Rs. 1·5 crores to meet its liabilities upto 31-3-1967. Since at the same time it was necessary to do something effective to safeguard the interests of the Shipping Development Fund Committee, to maintain the reputation of the national shipping industry in world shipping and to take possession of the books of account, etc., with a view to examining how the affairs of the company have been conducted, Government decided to take over the management of the company for a limited period.

As Parliament was not in session, an Ordinance called the Jayanti Shipping Company (Taking Over of Management) Ordinance, 1966, was promulgated by the President on the 10th June, 1966.

The Bill seeks to replace the Jayanti Shipping Company (Taking Over of Management) Ordinance, 1966.

NEW DELHI; N. SANJIVA REDDY.

The 19th July, 1966.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. 36-MD(78)/66, dated the 1st August, 1966 from Shri C. M. Poonacha, Minister of State in the Ministry of Transport and Aviation to the Secretary, Lok Sabha].

The President having been informed of the subject matter of the Bill to provide for the taking over of the management of the undertaking of the Jayanti Shipping Company for a limited period in order to secure the appropriate management of the same, recommends under article 117(3) of the Constitution of India, the consideration of the said Bill in the Lok Sabha.

FINANCIAL MEMORANDUM

The Bill contemplates the appointment of a Board of Control which shall alone be entitled to exercise all the powers of the board of directors of the Jayanti Shipping Company. The Bill also contemplates the appointment by the Board of Control of managing agents for the management of the undertaking of the company and further provides that the managing agent shall receive such remuneration as may be determined by the Board of Control with the previous approval of the Central Government.

2. Clause 17 of the Bill, however, provides that all salaries, allowances and other remunerations paid to the Chairman and other members of the Board of Control, the managing agent or any other person who may be appointed or employed in connection with the affairs of the management of the company and all other expenses duly incurred in connection with such management shall be paid out of the funds of the company. Therefore, whatever expenses are initially incurred from the Consolidated Fund of India to meet the salaries, allowances and other remunerations of the Chairman and other members of the Board of Control or of the managing agent shall be ultimately recouped from the funds of the Jayanti Shipping Company and as such no net expenditure is likely to be incurred from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 19 authorises the Central Government to make rules for carrying out the purposes of the Bill. Clause 3(4) of the Bill contemplates the making of rules providing for the term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among, the members of the Board of Control. These are matters of detail and as such the delegation of the legislative power is of a normal character.

S. L. SHAKDHER,
Secretary.

CORRIGENDA

In the Gazette of India Extraordinary, Part II—Section 2—

1. No. 3, dated the 17th February, 1966:—
 Page 24, *for* 'KRISHNA DEO TRIPATHI' *read* 'HUKAM CHAND KACHWAI'.
2. No. 6, dated the 28th February, 1966:—
 (i) Page 62, line 9, *read* '7 of 1947.' as marginal reference;
 (ii) Page 89, line 40, *for* 'surcharge' *read* 'surcharges' ; and
 (iii) Page 92, line 23, *for* 'pecified' *read* 'specified'.
3. No. 11, dated the 18th March, 1966:—
 Page 145, line 3, *for* 'harged' *read* 'Charged'.
4. No. 14, dated the 25th March, 1966:—
 Page 170, last line, *for* '19,89,70' *read* '19,89,700'.
5. No. 17, dated the 1st April, 1966:—
 Page 203, *for* 'Choudhury Brahm Perkash' *read* 'Chodhury Brahm Perkash' and *for* 'Shri Vijayasinhrao Ramarao Dafle' *read* 'Shri Vijayasinhrao Ramrao Dafle'.
6. No. 20, dated the 18th April, 1966:—
 Page 273, *read* 'Courts in Delhi' appearing against 17(1), in continuation of the marginal heading to clause 16.
7. No. 22, dated the 29th April, 1966:—
 Page 292, line 11, *for* 'oa' *read* 'on' and line 12, *for* 'Corpntion' *read* 'Corporation'.
8. No. 25, dated the 11th May, 1966:—
 Page 339, against 'LV' and under the column 'Total' *read* '22,19,32,700'.

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